APPEAL NO. 030568
FILED APRIL 24, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 4, 2003. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 16th quarter. Appellant (carrier) appealed this determination on sufficiency grounds. The file does not contain a response from claimant.

DECISION

We reverse and remand.

This is a no ability to work SIBs case where the hearing officer found for claimant. Carrier contends the hearing officer erred in determining that claimant is entitled to SIBs. Carrier appeals, asserting that other records "show that the injured employee is able to return to work." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). Carrier asserts that the reports of Dr. T and Dr. W are other records that show that claimant had an ability to work.

In two reports, Dr. T indicated that he performed a records review, but that he did not examine claimant. Dr. T stated that the effects of claimant's compensable injury "resolved completely" and claimant's symptoms are due to "preexistent degenerative abnormalities"; that claimant should have reached an end of treatment in 1997; and that claimant's medications are not reasonable or necessary. In a July 17, 2002, report, Dr. T indicated that it appeared that claimant had been ready to return to full-duty work with regard to the effects of the compensable injury on or before May 1997. In a September 4, 2002, letter, Dr. W noted claimant's symptoms and said he recommended diagnostic testing to see whether surgery was needed. Dr. W also said, "I certainly believe that [claimant] could perform [sedentary] work at the present time."

Dr. M stated that claimant's legs buckled at times, and that he needed help with some activities of daily living. Dr. M said claimant had a significant adjustment disorder that was debilitating at times and that he was receiving treatment. Dr. M said claimant's symptoms and claimant's inability to perform some activities of daily living, such as lower extremity dressing, create the adjustment disorder. In Dr. T's record review, he noted that Dr. M's October 31, 2001, follow-up note "recommended Catapres from chronic pain and Remeron with symptoms of stress and depression related to chronic pain and discomfort." Dr. T also indicated that an April 24, 2002, medical note said claimant has adjustment disorder due to his chronic cervical and lumbar spasms. Dr. T stated that, "although an opinion from a mental health practitioner would be more optimal," it was his impression that there was no relationship between claimant's compensable injury and the anxiety and depression.

The hearing officer determined that, “The medical reports of [Dr. W] based on an examination on September 4, 2002, [state] that claimant could perform limited work in a sedentary capacity.” The hearing officer did not mention the reports of Dr. T. The hearing officer apparently discounted the report of Dr. W, but did not explain why.

Rule 130.102(d)(4) states that the "good faith" criterion will be met if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. A hearing officer may discount a record that states that a claimant is able to work and find that it does not show an ability to work, but the hearing officer should make findings of fact to specifically explain why such record was discounted. *See* Texas Workers' Compensation Commission Appeal No. 011577, decided August 22, 2001. For instance, a doctor’s record may be discounted if it is much too remote in time and there has been a change in condition, if the effects of medications were not considered, or if all of the compensable injury was not considered. We note that the fact that a doctor’s report was written a few months after the qualifying period is not a basis for discounting the report unless there has been a change in condition. Texas Workers' Compensation Commission Appeal No. 960880, decided June 18, 1996.

We must remand this case for the hearing officer to make findings of fact. On remand, the hearing officer should determine whether the medical records of Dr. W and Dr. T show that the claimant had an ability to work. The hearing officer should also make specific findings explaining the reasons for discounting such records, if such are indeed discounted. In remanding, we intend in no way to comment regarding the outcome of this case or the weight or consideration the hearing officer might choose to give to any report.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers’ Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

According to information provided by carrier, the true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

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Judy L. S. Barnes
Appeals Judge

CONCUR:

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Chris Cowan
Appeals Judge

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Roy L. Warren
Appeals Judge